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No. \_\_\_\_\_

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SUPREME COURT, U.S.

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IN THE SUPREME COURT OF THE  
UNITED STATES

OCTOBER, 1991

EMERY L. NEGONSOTT, Petitioner

v.

HAROLD SAMUELS and the ATTORNEY  
GENERAL OF THE STATE OF KANSAS

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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35 pp

### **QUESTION PRESENTED**

I. Whether 18 U.S.C. section 3243 confers criminal jurisdiction on the State of Kansas to prosecute Petitioner for the crime of aggravated battery, one of the crimes enumerated in the Major Crimes Act, 18 U.S.C. section 1153.

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this matter on May 8, 1991.

#### **OPINIONS BELOW**

The May 8, 1991 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, is reported at 933 F.2d 818 (10th Cir. 1991) and is reprinted in the separate Appendix to this Petition, page 44. The prior opinion of the United States District Court for the District of Kansas is unreported and is reprinted in the separate Appendix to this Petition, page 35.

The opinion of the Kansas Supreme Court is reported at 239 Kan. 127, 716 P.2d 585 (1986) and is reprinted in the separate Appendix to this Petition, page 21.

#### **JURISDICTION**

The judgment of the Court of Appeals was entered on May 8, 1991. The jurisdiction of this Court is invoked pursuant to 18

U.S.C. section 1254(1).

#### **CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES INVOLVED**

This case involves 18 U.S.C. section 3243 which provides as follows:

Jurisdiction is conferred over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

This case also concerns the Major Crimes Act, 18 U.S.C. section 1153:

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses,

namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A (18 U.S.C.S. section 2241, et seq.), incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title (18 U.S.C.S. section 661) within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

#### **STATEMENT OF THE CASE**

This is an Indian criminal jurisdiction

issue, challenging the jurisdiction of the State of Kansas to prosecute Petitioner for a crime enumerated in the Major Crimes Act, 18 U.S.C. section 1153.

Petitioner, Emery L. Negonsott is an enrolled member of the Kickapoo Tribe in Kansas and a resident of the Kickapoo reservation.

During 1985, Mr. Negonsott was arrested by the Brown County Sheriff for the crime of aggravated battery for the shooting of another Kickapoo Indian. The crime occurred within the confines of the Kickapoo reservation. Mr. Negonsott was tried in the District Court of Brown County, Kansas and convicted of the offense after a jury trial. Judge Stevenson, the trial judge, relying on State of Kansas v. Mitchell, 231 Kan. 142, 642 P.2d 981 (1982), set aside the conviction for lack of criminal jurisdiction. The State of Kansas appealed Judge Stevenson's order to the Kansas Supreme Court, which reversed. State of Kansas v. Negonsott, 239 Kan. 127, 716 P.2d 585 (1986).

Petitioner's case was remanded to the Brown County District Court for sentencing and he was sentenced to a term of three to ten years. Petitioner served eighteen (18) months and is currently on parole.

Petitioner then filed a writ of habeas corpus with the United States District Court for the District of Kansas. On September 22, 1988 the writ was dismissed. The District Court ruled that based on the legislative history of 18 U.S.C section 3243 "the court concludes that Congress intended to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas." The court further found that "Kansas courts and the Federal courts have concurrent jurisdiction over crimes that fall within the scope of the Federal Crimes Act, 18 U.S.C. section 1153."

The case was appealed to the Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. section 1291. The Court of

Appeals upheld the decision of the lower court.

The decisions of both courts were based upon an erroneous interpretation of the legislative history surrounding the Kansas Act, 18 U.S.C. section 3243.

#### REASONS FOR GRANTING THE WRIT

**Certiorari Should Be Granted to Resolve Conflicts Between the Court of Appeals for the Tenth Circuit and the Court of Appeals for the Eighth Circuit.**

18 U.S.C. section 3243 provides:

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction



over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

The Tenth Circuit held that 18 U.S.C. section 3243 did not grant the federal courts exclusive jurisdiction over one of the crimes included in the Major Crimes Act, 18 U.S.C. section 1153 because the legislative history of the Kansas Act made it clear that Congress intended to confer jurisdiction over such acts on State courts.

This holding is in direct contradiction to a decision by the Court of Appeals for the Eighth Circuit which held, in reviewing the same legislative history, that an Iowa Act similar to the Kansas Act mandated exclusive federal jurisdiction. Youngbear v. Brewer, 415 F.Supp. 807 (N.D. Iowa 1976), aff'd, 549 F.2d 74 (8th Cir. 1977).

The Kansas Act is clearly ambiguous and both appellate courts agree with this argument. The first section of the statute appears to grant the State of Kansas general

criminal jurisdiction over offenses committed by or against Indians on Indian reservations, while the last section appears to retain exclusive federal jurisdiction over crimes listed in the Major Crimes Act, 18 U.S.C. section 1153.

As the court found in Youngbear, supra, a careful analysis of the legislative history of the Kansas Act leaves no doubt that Congress intended to preserve exclusive federal jurisdiction over an Indian defendant who commits one of the "major crimes."

The statute as originally drafted provided:

Be it enacted ... That concurrent jurisdiction is hereby relinquished to the State of Kansas to prosecute Indians and others for offenses by or against Indians or others, committed on Indian reservations in Kansas, including trust or restricted allotments, to the same extent as its courts have jurisdiction for offenses committed elsewhere within the state in

accordance with the laws of the State; and section 328 of the Act of March 4, 1909 (35 Stat. 1152), as amended by the Act of June 28, 1932 (47 Stat. 337), and sections 2145 and 2146 of the United States Revised Statutes (U.S.C., title 18, section 548, title 25, secs. 217, 218 are modified accordingly insofar as they apply to Indian reservations or Indian country in the said State of Kansas. 86 Cong. Rec. 5596, 76th Cong. 3rd Sess. (May 6, 1940). (Emphasis added.)

A subsequent amendment eliminated the reference to concurrent jurisdiction and the modification of the Major Crimes Act:

That jurisdiction is hereby conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State: Provided, however, That nothing

herein contained shall deprive the courts of the United State of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations. 86 Cong. Rec. 5596, 76th Cong. 3rd Sess. (May 6, 1940).

It is this version, with minor modifications, that subsequently became the law.

Three documents are part of the legislative history. One is a letter from then United States Congressman, W.P. Lambertson, dated April 17, 1940. The other two documents consist of a letter from then Acting Secretary of the Interior, E.K. Burlew and an undated memorandum submitted by the Department of the Interior enclosed with Mr. Burlew's letter. In analyzing the Kansas Act, the District Court and the Court of Appeals placed unwarranted emphasis on the documents from the Department of the Interior while completely ignoring the letter from Congressman Lambertson.

Petitioner contends that the letter



and memorandum from the Department of the Interior refer to the original version of the statute as quoted above. This version of the statute was drafted by the Interior Department and would have explicitly granted concurrent jurisdiction to the courts of the State of Kansas and the federal courts. This version would also have amended the Major Crimes Act as it pertained to Indians residing on reservations in the State of Kansas. Youngbear v. Brewer, supra, at page 813, n. 5. This contention is supported by the language found in the letter and memorandum. For example, the memorandum accompanying Secretary Burlew's letter speaks of the intention to confer jurisdiction over all criminal offenses, including those listed in the Major Crimes Act:

The proposed relinquishment of jurisdiction to the State of Kansas appropriately extends to those offenses which are provided for in existing Federal statutes as well as to those which are not. The State courts have in the past exercised jurisdiction

over offenses of both types to the general satisfaction of the tribes ... The prosecution in the Federal courts of those offenses which are now open to such prosecution will not be precluded under the bill in any particular instance where this course may be deemed advisable. H.R. Rep. No. 1999, at 5 and S. Rep. No. 1523, at 4.

Additionally, the letter from Mr. Burlew makes it clear that the letter and memorandum are only referring to the statute as originally drafted:

However, the bill, as now worded, does not express with entire accuracy the legal situation as it now exists or as intended to be created. The bill proposes to relinquish concurrent jurisdiction to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by State law. However, the Federal government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing

to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining, however, jurisdiction in the Federal courts to prosecute crimes by or against Indians defined by Federal law. H.R. Rep. No. 1999, at 3 and S. Rep. No. 1523, at 2. (Emphasis added.)

The letter and memorandum also reflect the fact that jurisdiction was to be given to Kansas for only minor crimes:

As the Indian Service is not now in a position to establish a law and order set-up on these four reservations, the superintendent is of the opinion that the maintenance of law and order will get into a precarious condition if the State authorities are not permitted to continue giving the Indians police protection. H.R. Rep. No. 1999, at 5, S. Rep. No. 1523, at 4.

The Secretary was referring to the establishment of tribal courts on the four reservations. Tribal courts have never had jurisdiction

to prosecute defendants for violations of the crimes included in the Major Crimes Act. Therefore, the Secretary must have been referring to the punishment of minor crimes by the State of Kansas.

Petitioner concedes that the language of the Kansas Act as proposed by Secretary Burlew is the same as that eventually passed into law. However, Congress must have chosen not to accept the Secretary's interpretation of 18 U.S.C. section 3243, otherwise Congressman Lambertson's letter would have spoken to "major" as well as "small" offenses.

This letter states as follows:

I want to urge that you recommend out of the committee H.R. 3048 with the requested change in language in one place. All parties are agreed on this bill - the Indians, the superintendent, the Indian agencies on the Kansas reservations, which are all in my district, and the people that are on and surround the reservations.

This bill has been O.K.'d by the Indian

office through the Indian Department and I understand by the Department of Justice and no objection found to it by the Budget. The Government here relinquishes to the State full jurisdiction over the Indians for small offenses. It will be in the interest of law and order and a unified law enforcement ... H.R. Rep. 1999, 76th Cong., 3rd Sess. 2 (1940). (Emphasis added.)

This letter clearly shows that Congress did not intend to relinquish jurisdiction over the major crimes to the State of Kansas. The Court of Appeals for the Tenth Circuit agreed with this interpretation in another case:

(the) most persuasive evidence of Congressional intent is a letter written by Representative W.P. Lambertson, a Kansas congressman, urging approval of the amended version of the bill. This letter which is contained in the House Report states: 'The Government relinquishes to the State full jurisdiction over the Indians for small offenses.' (citations

omitted.)

Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas, 787 F.2d 1434, 1440 (10th Cir. 1986).

Petitioner's analysis of the legislative history is consistent with the analysis by Judge McManus in Youngbear v. Brewer, supra, and upheld by the Court of Appeals for the Eighth Circuit.

In Youngbear v. Brewer, supra, the defendant was a member of the Sac & Fox Tribe. He was prosecuted by the State of Iowa for the crime of murder, one of the major crimes. The Iowa Supreme Court affirmed the conviction, rejecting Mr. Youngbear's argument that the courts of Iowa lacked jurisdiction to prosecute him. Since the law granting criminal jurisdiction to Iowa, Act of June 30, 1948, Ch. 759, 62 Stat. 1161, Pub. L. No. 846, was the same as 18 U.S.C. section 3243, Judge McManus analyzed the legislative history of the Kansas Act to determine congressional

intent with regard to the Iowa Act. In his analysis of the legislative history of 18 U.S.C. section 3243, Judge McManus stated:

Also pertinent is the legislative history of a statute whose operative language is identical with that of P.L. 846 except for the designation of the State of Kansas rather than Iowa. That statute (citations omitted) was cited as the model to which Pub. L. 846 could be compared. H.R. Rep. 2356 at 3. The original draft of the bill conferring jurisdiction on the State of Kansas (citations omitted), did state that concurrent jurisdiction was relinquished to the State, and further expressly provided that 18 U.S.C. section 548 (Federal Major Crimes Act as then codified) was modified accordingly. (citations omitted) This bill was rejected, and the substituted bill which was subsequently enacted did not contain either the term 'concurrent' or the clause modifying the effect of the Federal Major Crimes Act. By deleting this

language, the only intent which can reasonably be inferred to Congress was to preserve exclusive Federal jurisdiction over the major crimes.

Evidence of this intent also appears in a letter from Representative W.P. Lambertson, a Kansas congressman whose district was affected by the bill. The letter, appearing in the report of the House Committee on Indian Affairs, H.R. Rep. 1991 at 2, 76th Cong. 3rd Sess. (1940), states that 'The Government here relinquishes to the State full jurisdiction over the Indians for small offenses.'

Youngbear v. Brewer, supra, at pages 812-813.

Judge McManus dismissed the letter from Secretary Burlew:

Respondent cites a letter from then Acting Secretary of Interior which suggests that the bill would grant concurrent jurisdiction over the major crimes. H.R. Rep. 1999, 76th Cong., 3rd Sess. (1940). However, it appears that the letter refers to the

original bill, which was drafted by the Interior Department and would have explicitly granted concurrent jurisdiction.

Id., at page 813, n. 5.

The Court of Appeals for the Eighth Circuit upheld the decision of Judge McManus stating:

Judge McManus fully and extensively discussed the applicable case law and legislative history and we are persuaded by his reasoning.

Accordingly, we affirm on the basis of that opinion. (citation omitted.)

Youngbear v. Brewer, 549 F.2d 74, 76 (8th Cir. 1977).


The decisions of the District Court and the Court of Appeals are clearly erroneous. These decisions ignore the most persuasive evidence of Congressional intent contained in the legislative history of the Kansas Act, violate the canons of construction as set forth by this Court in Bryan v. Itasca County, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976), and work an unlawful

repeal of the Major Crimes Act as it pertains to the Indians in Kansas.

#### CONCLUSION

Wherefore, Petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

  
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APPENDIX

STATE OF KANSAS,

Appellant,

-vs-

BERNICE NIOCE,

Appellee,

and

STATE OF KANSAS,

Appellant,

-vs-

EMERY L. NEGONSOTT,

Appellee.

SYLLABUS BY THE COURT

Congress' intent in enacting 18 U.S.C. section 3243 (1982) was to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The United States retains concurrent jurisdiction with Kansas over crimes listed in the Federal Major Crimes Act. 18 U.S.C. section 1153 (1982). (Overruling State v. Mitchell, 231 Kan. 144, 642 P.2d 981 (1982)).

No. 58,328, appeal from Jackson district court, TRACY D. KLINGINSMITH, judge; No. 58,530, appeal from Brown district court, WILLIAM L. STEVENSON, judge. Opinion filed March 28, 1986. Reversed and remanded.

Michael A. Ireland, county attorney, argued the cause, and Robert T. Stephen, attorney general, was with him on the brief for appellant in case No. 58,328.

Timothy G. Madden, assistant attorney general, argued the cause, and Robert T. Stephen, attorney general, and Phillip A. Brudick, county, were with him on the brief for appellant in case No. 58,530.

William E. Enright, of Topeka, argued the cause and was on the brief for appellee Nioce.

Robert L. Tabor, of Topeka, argued the cause for appellee Negonsott.

These consolidated actions raise the issue of whether the State of Kansas has jurisdiction over criminal offenses committed by or against Indians on Indian reservations



located within this state. While the facts are not essential for resolution of this issue, they are briefly stated as follows:

Appellee Bennie Nioce is an American Indian who allegedly committed aggravated battery upon another American Indian while on the Pottawatomie County Indian Reservation in Jackson County, Kansas. The Jackson County District Court, relying on our holding in State v. Mitchell, 231 Kan. 144, 642 P.2d 981 (1982), dismissed the charges against Nioce. Identical charges were subsequently reinstated against Nioce, based upon a recent decision of the Federal District Court of Kansas, Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas, No. 83-4304 (D. Kan. 1984). The federal court concluded Mitchell was wrongly decided. The Kansas trial court, however, once again dismissed the charges against Nioce, following Mitchell.

Appellee, Emery Negonsott is a Kickapoo Indian who is charged with aggravated battery

for the shooting of another Kickapoo Indian. The shooting occurred within the territorial confines of the Kickapoo Indian Nation Reservation, located in Brown County, Kansas. He was convicted by jury of the crime charged but the district court, relying on Mitchell subsequently set aside the conviction for lack of jurisdiction.

The State appeals, urging the court to reconsider its decision in Mitchell and give Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations in Kansas.

The primary issue is whether the State of Kansas has jurisdiction to try the appellants for the crime of aggravated battery. Resolution of this issue depends upon our interpretation of 18 U.S.C section 3243 (1982):

"Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same

extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

"This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

The first provision of this statute is clear and appears to confer jurisdiction on the State of Kansas over all offenses committed by or against Indians on Indian reservations within the State. However, the second paragraph renders the statute ambiguous as it preserves federal jurisdiction over "offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

Appellees argue the Federal Major Crimes Act, codified at 18 U.S.C. section 1153 (1982), grants exclusive federal jurisdiction over Indian offenses. That statute provides

in part:

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."

We first had occasion to interpret 18 U.S.C. section 3243 in State v. Mitchell, 231 Kan. 144, 642 P.2d 981 (1982). There, the defendant was charged with murder in the second degree. Both the defendant and the victim were "Indians" and the offenses

occurred within "Indian country" as those terms are defined in 18 U.S.C. section 1151 et seq. (1982). The defendant argued 18 U.S.C. section 1153 granted exclusive federal jurisdiction over Indian offenses, while the State contended 18 U.S.C. section 3243 gave Kansas concurrent jurisdiction. After examining the legislative history of the statutes in question, we determined that Congress, in enacting 18 U.S.C. section 3243, intended to retain exclusive jurisdiction over the crimes specifically enumerated in 18 U.S.C. section 1153, including murder. Therefore, we held the State acted beyond the scope of its jurisdictional authority in trying the defendant for murder.

The court, in so holding, relied primarily upon the case of Youngbear v. Brewer, 415 F. Supp. 807 (N.D. Iowa 1976), aff'd 549 F.2d 74 (8th Cir. 1977). There, the federal court interpreted an identical grant of jurisdiction to Iowa, and held that Congress intended to preserve exclusive federal

jurisdiction over the major crimes.

This court in Mitchell and the federal court in Youngbear cited the legislative history of 18 U.S.C. section 3243 as support for their interpretation of the statute. The original draft of the bill conferring jurisdiction on the State of Kansas specifically provided that concurrent jurisdiction was relinquished to the State and further provided that the Federal Major Crimes Act be modified accordingly. 86 Cong. Rec. 5596, 76th Cong. 3d Sess. (May 6, 1940). A subsequent committee amendment, however, rejected the references to concurrent jurisdiction and modification of the Major Crimes Act. We concluded, as did the Youngbear court, that deletion of this language clearly indicated Congress' intent to preserve exclusive federal jurisdiction over the major crimes and to give Kansas jurisdiction only over minor offenses. State v. Mitchell, 231 Kan. at 150. See also Youngbear v. Brewer, 415 F. Supp. at 813.

The State now urges us to reexamine Mitchell in light of the Federal District Court of Kansas decision in Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas, No. 83-4304 (D. Kan. 1984).

In Iowa Tribe, the plaintiff sought a declaratory judgment that 18 U.S.C. section 3243 does not make Kansas gambling laws prohibiting the sale of "pull-tab cards" applicable to such activities on the Iowa Indian reservation. The State counterclaimed, seeking a declaration that 18 U.S.C section 3243 grants jurisdiction over Indians for acts occurring on the reservation which are recognized as crimes under Kansas law. The federal district court concluded that 18 U.S.C section 3243 confers complete (but not exclusive) criminal jurisdiction upon the State of Kansas. In reaching its decision, the district court considered additional relevant legislative history to 18 U.S.C section 3243 not considered by this court in Mitchell or the federal district court

in Youngbear.

Specifically, the court considered the report of E.K. Burlew, Acting Secretary of the Interior, to Representative Will Rogers, Chairman of the House Committee on Indian Affairs, and Senator Elmer Thomas, Chairman of the Senate Committee on Indian Affairs. This report consisted of a letter and memorandum discussing the purpose and effect of the proposed legislation.

As noted by the federal Court in Iowa Tribe, Burlew's letter indicates the purpose of the legislation was to allow Kansas courts to continue punishing offenses committed on Indian reservations, including offenses covered by federal statutes. The relevant portion of Burlew's letter follows:

With the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, including those covered by Federal statutes.



The legality of this practice being questioned recently, the tribal councils of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State." (Emphasis added.) H.R. Rep. No. 199, 76th Cong., 3d Sess. 2 (1940); S. Rep. No. 1523, 76th Cong., 3d Sess. 2 (1940).

The Department of Interior memorandum accompanying Secretary Burlew's letter leaves little doubt that 18 U.S.C section 3243 was intended to confer jurisdiction to Kansas over all criminal offenses, including those listed in 18 U.S.C section 1153. The memorandum provides in pertinent part:

"The proposed relinquishment of jurisdiction to the State of Kansas appropriately extends to those offenses which are provided for in existing Federal statutes as well as to those which are not. The State courts have in the past exercised jurisdiction over offenses of both types to the general satisfaction of the tribes; the Indians

desire that they continue to do so; and a division of jurisdiction with respect to particular crimes based upon the place of their commission is rendered undesirable by the mutual interspersion of restricted and unrestricted holdings. The prosecution in the Federal courts of those offenses which are now open to such prosecution will not be precluded under the bill in any particular instance where this course may be deemed advisable." (Emphasis added.) H.R. Rep. No. 1999, at 5 and S. Rep. No. 1523, at 4.

Additionally, the memorandum clarifies the reason why the original version of the House and Senate bills, which contained a reference to the relinquishment of concurrent jurisdiction to Kansas, was later modified to delete that reference:

"(The House and Senate Bills did) not express with entire accuracy the legal situation as it now exists or as intended to be created. The bill proposes to 'relinquish

concurrent jurisdiction' to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by State law. However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining, however, jurisdiction in the Federal courts to prosecute crimes by or against Indians defined by Federal Law." (Emphasis added.) H.R. Rep. No. 1999, at 3 and S. Rep. No. 1523, at 2.

The Iowa Tribe case is now on appeal to the Tenth Circuit Court of Appeals. This pending appeal has no bearing on our consideration of this issue since the supremacy clause of the United States Constitution is invoked only by a decision of the United States Supreme Court.

However, we find Judge O'Connor's opinion in Iowa Tribe persuasive and conclude from the additional legislative history considered therein that Congress' intent in enacting 18 U.S.C. section 3243 was to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The United States retains concurrent jurisdiction with Kansas over crimes listed in the Federal Major Crimes Act. 18 U.S.C. section 1153.

We hold that State v. Mitchell, 231 Kan. 144, 642 P.2d 981 (1982), is overruled and the judgment of the trial courts are reversed and the cases remanded for appropriate action.

SCHROEDER, C.J., dissenting.



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

EMERY L. NEGONSOTT,

Petitioner

v. CIVIL ACTION NO. 88-3049-S

HAROLD SAMUELS, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter is before the court on a petition for writ of habeas corpus filed pursuant to 28 U.S.C. section 2254. Petitioner, an inmate at the Kansas State Penitentiary, Lansing, Kansas, alleges that Kansas lacks jurisdiction over his criminal acts.

Petitioner is a Kickapoo Indian who was charged with aggravated battery for the shooting of another Kickapoo Indian within the territorial confines of the Kickapoo Indian Nation Reservation. Because the reservation is located within Brown County, Kansas, petitioner was tried before a jury in the district court of Brown County.

Although the jury found petitioner guilty, the district court set aside the conviction for lack of jurisdiction. Upon appeal by the State, the Kansas Supreme Court upheld petitioner's conviction and held that Kansas had jurisdiction over all crimes committed by or against Indians on Indian reservations in Kansas. State v. Nioce, 239 Kan. 127, 716 P.2d 585 (1986).

DISCUSSION

The only issue before this court is whether Kansas had jurisdiction over Indian offenses falling within the scope of the Federal Major Crimes Act. 18 U.S.C. section 1153. To decide this issue, the court must interpret federal statute 18 U.S.C. section 3243, which provides:

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction

over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

The apparent ambiguity of the statute is created by the language of the second paragraph. Although the first paragraph appears to confer jurisdiction on the State of Kansas over all Indian offenses committed within the state, the second paragraph's reservation of federal jurisdiction makes the extent of this conveyance ambiguous.

Petitioner argues that 18 U.S.C. section 3243 provides for exclusive federal jurisdiction for crimes falling within the scope of the Federal Major Crimes Act. 18 U.S.C. section 1153. Because aggravated battery is covered by the Federal Major Crimes Act, petitioner argues that Kansas lacks jurisdiction over his offense. In contrast, respondent argues that 18 U.S.C. section 3243 grants Kansas jurisdiction over all offenses committed by or against Indians on Indian reservations within the state.

This case is not the first time this

court has been asked to interpret 18 U.S.C. section 3243. In Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas, No. 83-4304 (D. Kan. May 30, 1984), this court was faced with the issue of whether the State of Kansas had jurisdiction to prosecute members of the Iowa Tribe of Indians of Kansas and Nebraska for selling "pull-tab cards" in connection with bingo games conducted on the Tribe's reservation. Interpreting the statute in light of its legislative history, this court concluded that Kansas had "jurisdiction over non-major state offenses committed by or against Indians on Indian reservations located in the state of Kansas. On appeal, the Tenth Circuit Court of Appeals affirmed this court's decision. Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas, 787 F.2d 1434 (10th Cir. 1086). Because the sale of "pull-tab cards" did not fall within the scope of the Federal Major Crimes Act, neither this court nor the Tenth Circuit

Court of Appeals reached the issue raised by this case.

Like the Kansas Supreme Court in Nioce and the Tenth Circuit Court of Appeals in Iowa Tribe, this court finds persuasive the legislative history of 18 U.S.C. section 3243. Of particular relevance is the report of E.K. Burlew, Acting Secretary of the Interior, to Representative Will Rogers, Chairman of the House Committee on Indian Affairs. This report, contained in House Report No. 1999, 76 Cong., 3rd Sess. (1940), consists of a letter and memorandum discussing the purpose and effect of the proposed legislation.

In his letter, Burlew explained the two main reasons for introducing the proposed legislation. First, Burlew noted that the federal criminal statutes applicable to Indian reservations were limited in scope and left some major crimes as well as most minor offenses outside the jurisdiction of the federal courts. H.R. Rep. No. 1999,

76th Cong., 3rd Sess. 2 (1940). Second, Burlew explained that, because more than two-thirds of the area within the reservation boundaries had passed beyond federal criminal jurisdiction due to the issuance of unrestricted patents, administrative convenience necessitated extending jurisdiction to Kansas over criminal matters. Id.

Burlew further explained that the proposed legislation was a codification of the ongoing practice in Kansas:

With the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, including those covered by Federal statutes. The legality of this practice being questioned recently, the tribal counsels (sic) of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State.

Id.

Later in his report, Burlew made it clear that the proposed legislation was intended to confer complete jurisdiction upon the State of Kansas, with the result that the Kansas courts and Federal courts would have concurrent jurisdiction over

crimes falling within the scope of the

Major Crimes Act:

The bill proposes to "relinquish concurrent jurisdiction" to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by State law. However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining, however, jurisdiction in Federal courts to prosecute crimes by or against Indians defined by Federal law.

Id.

That this was the purpose of the statute is further supported by the Department of the Interior memorandum accompanying Burlew's letter:

This proposed relinquishment of jurisdiction to the State of Kansas appropriately extends to those offenses which are provided for in existing Federal statutes as well as to those which are not. The State courts have in the past exercised jurisdiction over offenses of both types to the general satisfaction of the tribes; the Indians desire that they continue to do so; and a division of jurisdiction with respect to particular crimes based upon the place of their commission is rendered undesirable by the mutual interspersions of restricted and unrestricted holdings. The prosecution in the Federal courts of those offenses

which are not open to such prosecution will not be precluded under the bill in any particular instance where this course may be deemed advisable.

Id. at 4.

Based upon the legislative history of the statute in question, the court concludes that Congress intended to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The court also finds that the Kansas courts and the Federal courts have concurrent jurisdiction over crimes that fall within the scope of the Federal Crimes Act, 18 U.S.C. section 1153.

Having reached this conclusion, the court finds that the petition for writ of habeas corpus currently before the court must be dismissed. Pursuant to 18 U.S.C. section 3243, Kansas had jurisdiction over the aggravated battery committed by petitioner, notwithstanding the fact that the crime fell within the scope of the Federal Major

Crimes Act. 18 U.S.C. section 1153.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus be dismissed and all relief denied. The clerk of the court is directed to transmit a copy of this Memorandum and Order to petitioner and to the Office of the Attorney General for the State of Kansas.

DATED: This 22nd day of September, 1988, at Kansas City, Kansas.

/s/  
DALE E. SAFFELS  
United States District  
Judge

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

EMERY L. NEGONSOTT,

Plaintiff-Appellant,

v. No. 88-2666

HAROLD SAMUELS and THE

ATTORNEY GENERAL OF THE

STATE OF KANSAS,

Defendants-Appellees.

Appeal from the United States District  
Court for the District of Kansas

(D.C. No. 88-3049-S)

Pamela S. Thompson, Kansas City, Kansas,  
for Plaintiff-Appellant.

Timothy G. Madden, Special Assistant Attorney  
General, Department of Corrections, Topeka,  
Kansas, for Defendants-Appellees.

Before HOLLOWAY, Chief Judge, SEYMOUR,  
and EBEL, Circuit Judges.

SEYMOUR, Circuit Judge.

This habeas case requires us to determine  
the scope of criminal jurisdiction granted  
by 18 U.S.C. section 3243 (1988) to the



State of Kansas over state-law offenses committed by Indians on Indian lands. Petitioner, Emery L. Negonsott claims that Kansas lacked subject matter jurisdiction to prosecute him for aggravated battery because that offense is within exclusive federal jurisdiction under the Federal Major Crimes Act, 18 U.S.C. section 1153 (1988). The district court held that the State had jurisdiction. We agree and conclude that the federal grant of criminal jurisdiction to the State of Kansas in section 3243 extends to state-law offenses that are also crimes enumerated in the Major Crimes Act.

I.

Negonsott belongs to the Kickapoo Tribe and resided during 1985 on the Kickapoo reservation in Brown County, Kansas. He was arrested, charged, and convicted in that year of aggravated battery in the District Court of Brown County for shooting another Kickapoo Indian on the Kickapoo

reservation. See Kan. Stat. Ann. section 21-3414 (1988). The state trial judge, relying on State v. Mitchell, 231 Kan. 144, 642 P.2d 981 (1982), vacated the conviction for lack of subject matter jurisdiction. On appeal, the Kansas Supreme Court reversed in a decision overruling Mitchell, and Negonsott's case was remanded for sentencing. See Kansas v. Nioce, 239 Kan. 117, 716 P.2d 585 (Kan. 1986). Negonsott was sentenced to imprisonment for a term of three to ten years.

Negonsott filed a petition for a writ of habeas corpus in the United States District court for the District of Kansas, continuing his claim that the State of Kansas lacked jurisdiction to convict him for the offense of aggravated battery as defined by Kansas state law. The district court denied the writ and Negonsott appeals.

II.

The sole issue in this case is whether 18 U.S.C. section 3243 confers jurisdiction



on the State of Kansas to prosecute petitioner, a Kickapoo Indian, for the state-law crime of aggravated battery against another Indian committed on the reservation. This question of statutory interpretation is one of law, which we review de novo. See Ross v. Neff, 905 F.2d 1349, 1352 (10th Cir. 1990).

In analyzing the criminal jurisdiction of the State of Kansas over crimes involving Indians committed on Indian land, we begin with the language of the relevant statutes. It is elementary that "(i)n construing a statute we are obliged to give effect, if possible, to every word Congress used." Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). If a statute is susceptible to two meanings, a court will choose a meaning that gives full effect to all the provisions of the statute. See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985). Moreover, statutes should be construed so that their provisions are harmonious with each other.

See United States v. Stauffer Chemical Co., 684 F.2d 1174, 1184 (6th Cir. 1982).

The statute under which the State of Kansas claims subject matter jurisdiction provides:

"Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its court have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

"This section shall not deprive the courts of the United State of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

18 U.S.C. section 3243 (emphasis added).

The second sentence of this statute appears to refer in part to the Indian Major Crimes Act, which provides:

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, ... within the Indian Country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within

the exclusive jurisdiction of the United States.

"(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense."

18 U.S.C section 1153 (1988) (emphasis added). A separate statute governs the jurisdiction and venue of the Major Crimes Act as follows:

"All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States."

18 U.S.C section 3242 (1988) (emphasis added).<sup>1</sup>

1. The predecessor to sections 1153 and 3242 was initially passed in 1885 in response to the Supreme Court's opinion in Ex Parte Crow Dog, 109 U.S. 556 (1883), which held that the limited jurisdiction of the federal courts did not extend to crimes by an Indian against another Indian on an Indian reservation. See United States v. Kagama, 118 U.S. 375, 383 (1886). In the original enactment, what are now sections 1153 and 3242 were combined in one provision. Act of March 3, 1885, ch. 341, section 9, 23 Stat. 385.

The crimes of assault with a dangerous weapon and assault resulting in serious bodily injury, named in the Major Crimes Act, are defined for purposes of federal jurisdiction at 18 U.S.C section 113(c) & (f) (1988). Federal jurisdiction over major crimes committed by Indians has been held to be exclusive. See United States v. John, 437 U.S. 634, 651 (1978); United States v. Antelope, 430 U.S. 641, 649 n. 12 (1977); Seymour v. Superintendent, 368 U.S. 351, 359 (1962); see also Langley v. Ryder, 778 F.2d 1092, 1096 n. 2 (5th Cir. 1985) (holding that section 1153 preempts state criminal jurisdiction, citing John). Negonsott contends that the Kansas Act did not confer jurisdiction on the Kansas state courts over those corresponding state law offenses which are also included in the Major Crimes Act and which are otherwise within exclusive federal jurisdiction.

The first sentence of the Kansas Act at issue here, see supra at 4, unambiguously

confers criminal jurisdiction on the State of Kansas over offenses committed by Indians against Indians on Indian reservation land "to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the state." 18 U.S.C. section 3243 (emphasis added). In other words, the grant of state jurisdiction over all types of state crimes is complete. The second sentence of the Kansas Act appears intended to ensure that the congressional grant of jurisdiction to Kansas state courts over state-law crimes contained in the first sentence would not "deprive" the United States of its jurisdiction over federally-defined offenses committed by or against Indians on Indian reservations. An ambiguity exists, however, because as we have noted federal jurisdiction over major crimes committed by Indians would otherwise be exclusive. Thus, we must resolve whether Congress intended to grant

Kansas courts concurrent jurisdiction with federal courts over the crimes enumerated in the Major Crimes Act, or whether by the second sentence of the Kansas Act Congress intended to retain exclusive jurisdiction in the federal courts over those specific crimes.

The second sentence of the Kansas Act is of little help in resolving this conflict, since the words "shall not deprive the courts of the United States of jurisdiction" may be read in at least two ways. Congress may have intended, as argued by Negonsott, that the Kansas Act not deprive the federal court of any exclusive jurisdiction it enjoyed under existing law. Or, Congress may have meant to preserve the scope of federal jurisdiction over federally-defined crimes on Indian land, while modifying the exclusive jurisdiction of the federal courts in favor of concurrent jurisdiction where the federally defined crimes and crimes under Kansas law overlapped.

In resolving this ambiguity, we are mindful that "statutes passed for the benefit of dependent Indian tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Bryan v. Itasca County, 426 U.S. 373, 392 (1975) (quoting Alaska Pac. Fisheries v. United States, 248 U.S. 78, 79 (1918)). However, "statutory provisions which are not clear on their face may 'be clear from the surrounding circumstances and legislative history.'" Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208 n. 17 (1978) (citing DeCoteau v. District Court, 420 U.S. 425, 447 (1975)); see also Jones v. Intermountain Power Project, 794 F.2d 546, 552 (10th Cir. 1986). We accordingly look to legislative history to determine whether Congress intended to affect the exclusivity of federal jurisdiction over enumerated major crimes committed by Indians by passing the Kansas Act.

In enacting the Kansas Act, both the

House and Senate Committees on Indian Affairs submitted reports. These reports incorporated a letter from the Acting Secretary of the Interior to the Chairman of the House Committee on Indian Affairs concerning the bill. The letter explained the problems the legislation was designed to address and how the bill intended to solve them. See Letter from E.K. Burlew, Acting Secretary of the Interior, to Rep. Will Rogers, Chairman of the House Committee on Indian Affairs, reprinted in H.R. Rep. No. 1999, 76th Cong., 3d Sess. 2 (1940) (House Report); see also Sen. Rep. No. 1523, 76th Cong., 3d Sess. 1-3 (1940). The Secretary noted that federal jurisdiction over crimes concerning Indians on Indian land had been limited, leaving "some major crimes as well as practically all minor offenses outside the jurisdiction of the Federal courts." House Report at 2. Because the state lacked jurisdiction over such offenses, maintenance of law and order depended on the tribal courts,



which had not functioned on Kansas reservations for many years. To fill this void, and

"(w)ith the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, including those covered by Federal statutes. The legality of this practice being questioned recently, the tribal councils of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State."

Id. (emphasis added).

The Secretary also noted that the issuance of unrestricted patents for allotted lands interspersed with tribal and restricted lands created a jurisdictional checkerboard, resulting in practical difficulties. These difficulties

"can be most effectively met by conferring criminal jurisdiction over the entire area on the State. These considerations of administrative convenience extend to those offenses which are now cognizable in the Federal courts under the reservation statutes as well as those which are not."

Id. (emphasis added. Although the proposed legislation extended to the types of offenses then cognizable under federal law, the Secretary specifically observed that "(e)nactment

of the bill will not prevent the prosecution in the Federal courts of those acts which are within the cognizance of these courts under existing law." Id. at 2-3. These comments in the House and Senate Reports reflect an understanding that the proposed legislation would legalize the State's assertion of complete criminal jurisdiction under state law over the Indian tribes without depriving the federal court of its more limited criminal jurisdiction by virtue of preexisting jurisdictional grants such as the Major Crimes Act.

Like the court in Youngbear v. Brewer, 415 F. Supp. 807 (N.D. Iowa 1976), aff'd, 549 F.2d 74 (8th Cir. 1977) (construing analogous Iowa Act)<sup>2</sup>

2. The Eighth Circuit in Youngbear interpreted a Congressional grant of criminal jurisdiction to the state courts of Iowa over the Sac and Fox Indians virtually identical to the grant of jurisdiction to the Kansas State Courts at issue here. See Act of June 30, 1948, ch. 759, 62 Stat. 1161, Pub. L. No. 846. The court relied on the legislative history of the Kansas Act, after which the Iowa Act was modeled, to support its conclusions that the Iowa Act did not confer state court jurisdiction over crimes enumerated in the Major Crimes Act. See 549 F.2d at 76.

Negonsott relies heavily on a letter from Representative W.P. Lambertson of Kansas to the House Committee on Indian Affairs in support of his position that the scope of the Kansas State Court's jurisdiction under the Kansas Act does not extend to offenses enumerated in the Major Crimes Act. In his letter in support of the legislation, Lambertson stated that "(t)he Government here relinquishes to the state full jurisdiction over the Indians for small offenses." House Report at 1-2 (emphasis added). Negonsott interprets this letter as necessarily implying that federal courts were to retain exclusive jurisdiction over major offenses. Although it is possible, of course, that Congressman Lambertson meant to imply by this statement that the State of Kansas would assume no jurisdiction over the types of crimes covered in the Major Crimes Act, this implication is by no means a necessary one. It is also possible that Representative Lambertson understood the bill to confer

"full" jurisdiction over small crimes occurring among Indians to fill the void left by the tribal courts, while conferring concurrent power to prosecute the types of crimes covered by the Major Crimes Act. If we give Negonsott's interpretation credence, we are at a loss to explain why it contravenes the memorandum and letter from the Secretary of the Interior, incorporated along with Representative Lambertson's letter into the House and Senate Reports, which clearly evince an understanding that Kansas under the Act as amended could exercise criminal jurisdiction over all state-law crimes occurring on Indian lands.

The Eighth Circuit in Youngbear and Negonsott also attach much significance to the amendment of the title of the bill, replacing the phrase "concurrent jurisdiction"



with the word "jurisdiction," <sup>3</sup> and eliminating the reference to modification of the Major Crimes Act. See 86 Cong. Rec. 5596-97, 76th Cong. 3d Sess. (May 6, 1940).<sup>4</sup> However, the

3. As originally drafted, the Kansas Act was entitled a "bill to relinquish concurrent jurisdiction to the State of Kansas to prosecute Indians or others for offenses committed on Indian reservations." H.R. Rep. No. 1999, 76th Cong., 3d Sess., accompanying H.R. 3048. This language was amended to read: "A bill to confer jurisdiction on the State of Kansas over offenses committed by or against Indians on Indian reservations." Id.

4. As originally drafted, the Kansas Act would have provided as follows:

"Be it enacted...that concurrent jurisdiction is hereby relinquished to the State of Kansas to prosecute Indians and others for offenses by or against Indians or others, committed on Indian reservations in Kansas, including trust or restricted allotments, to the same extent as its courts have jurisdiction for offenses committed elsewhere within the State in accordance with the laws of the State; and section 328 of the Act of March 4, 1909 (35 Stat. 1151) as amended by the Act of June 28, 1932 (47 Stat. 337) and sections 2145 and 2146 of the United States Revised Statutes \*U.S.C., title 18, section 548, title 25, secs. 217, 218), are modified accordingly insofar as they apply to Indian reservations or Indian country in the said State of Kansas."

86 Cong. Rec. 5596, 76th Cong. 3d Sess. (May 6, 1940) (emphasis added).

Secretary, who recommended the revisions, offered an explanation in his letter.

Regarding amendment of the title "for clarification" he stated:

"(T)he bill, as now worded, does not express with entire accuracy the legal situation as it now exists or as intended to be created. The bill proposes to relinquish concurrent jurisdiction to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by state law. However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining however, jurisdiction in the Federal courts to prosecute crimes by or against Indians defined by Federal law."

House Report at 3 (emphasis added). The term "concurrent jurisdiction" was thus removed because it did not accurately describe the bill in any of its forms. Federal courts did not exercise jurisdiction over all state-law offenses, and therefore those courts would not be sharing concurrent jurisdiction with Kansas over all crimes. Conversely, federal courts under the Major

Crimes Act possessed exclusive jurisdiction over the crime enumerated therein. At the time of its enactment, therefore, the Kansas Act as to confer concurrent jurisdiction only as to those crimes covered by the Major Crimes Act. As explained by the Secretary, Congress' decision to excise the word "concurrent" from the title of the Act was to clarify rather than to change its substance. Reference to modification of the Major Crimes Act was apparently dropped as unnecessary when the second sentence of the Kansas Act was added instead.

Negonsott maintains that construing the Kansas Act to confer jurisdiction on the state courts over crimes enumerated in the Major Crimes Act is inconsistent with the well-settled rule that "'statutes passed for the benefit of dependent Indian tribes...are to be liberally construed, doubtful expressions being resolved in favor of the Indians.'" 426 U.S. at 392 (quoting Alaska Pac. Fisheries, 248 U.S.

at 89. If we were to adopt the state's interpretation, Negonsott contends, the historically exclusive stewardship of the federal government over major crimes committed on a reservation would be eliminated, and Indians could be subject to double prosecution under both federal and state law.

We do not believe that our interpretation is inconsistent with this canon of statutory construction. The Kansas tribes, themselves, in the interest of establishing law and order on Indian lands, "expressed a wish that the jurisdiction hitherto exercised by the State courts (over both major and minor crimes) be continued." House Report at 4-5. We are unwilling to conclude that state court criminal jurisdiction conferred by Congress in response to tribal requests invades the special relationship between the tribes and the federal government. If anything, the Kansas Act reflects congressional responsiveness to Tribal needs for unified law enforcement as expressed by the Tribes

themselves.

As to any prejudice the tribes may suffer from overlapping state and federal jurisdiction, the overlap resulted from legislation requested of Congress by the Tribes. No instance of double prosecution under the scheme in Kansas has been brought to our attention and, in any event, this hypothetical burden is not peculiar to Indian lands, but applies to nearly all Americans who live under overlapping federal and state jurisdictions.<sup>5</sup>

5. It is arguable that double jeopardy would attach to successive prosecutions under the Kansas Act and the Major Crimes Act. Negonsott cites United States v. Wheeler, 435 U.S. 313 (1978), in support of his double jeopardy argument. Wheeler concerned successive prosecutions under tribal law in tribal court and under federal law in federal court. The Court held that double jeopardy did not attach because the Tribe retained inherent tribal sovereignty apart from the exercise of federal sovereignty in the subsequent prosecution. Id. at 329-30. The present case, by contrast, involves the exercise of state authority pursuant to a congressional delegation of authority under federal sovereign power. The Kansas state court is arguably an arm of the federal government when it prosecutes under the Kansas

In sum, we conclude that the purpose of the Kansas Act as reflected in its legislative history indicates that Congress intended to confer jurisdiction on the Kansas state courts to prosecute petitioner for aggravated battery, a state-law crime also enumerated and defined for purposes of federal court jurisdiction in the Major Crimes Act. We therefore AFFIRM the district court's dismissal of the petition.

Act, thereby barring subsequent federal prosecutions in federal court. See Id. at 327 n. 26. We need not and do not decide this issue.